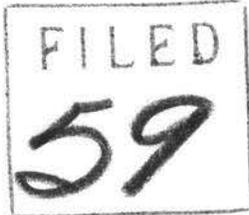


PUBLIC BUILDINGS:

Interpretation of provisions of a contract relating to the construction of a new Employment Security Office Building.

May 6, 1953



Honorable Ralph McSweeney
Director
Division of Public Buildings
Jefferson City, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this office which request reads as follows:

"I have received a written request from the Division of Employment Security for a clarification of certain sections of the revised specifications for the construction of a new Employment Security Office Building now under construction.

"I believe their request to me for clarification and interpretation should be a matter for the Attorney General to pass on, therefore I respectfully request your opinion on the subject matter.

The letter attached to your request reads as follows:

"With further reference regarding responsibility for supplying 1,600 fluorescent lamp tubes for our new Central Office, located on Jackson and Dunklin Streets, Jefferson City, Missouri, We would appreciate a clarification and interpretation of the specifications, revised June 18, 1952, in order that we

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may know who is to furnish the tubes. Please refer to Division 33, Electrical Work, Section 1, page 33-2, sub-paragraph (f), and Section 32, Electrical Fixtures, page 33-14, sub-paragraph (a) of said specifications, which appear to be contradictory."

The contract entered into on the 14th day of July 1952, for the construction of a new Employment Security Office Building incorporates into its terms by specific reference the specifications for the construction of said building as revised June 18, 1952. Said contract provides in part as follows:

"The contractor shall furnish all labor and materials and perform all work required * * * in accordance with the plans and specifications therefor. The specifications which are made a part thereof are designated as follows:

'Specifications for construction of office building, Division of Employment Security, State of Missouri, prepared by Marcel Boulicault, Architect, dated revised June 18, 1952.'

Subpart (f) of Section 1 of Division 33, (Electrical Work) and found in the revised specifications provides as follows:

"(f) The lamps and tubes will be furnished by the Division of Employment Security but installed by this contractor."

Subpart (a) of Section 32 of the same provision provides as follows:

"(a) Furnish and install, connect up ready for use, all electric fixtures as required. All fixtures shall be complete with lamps. This Contractor shall figure on the fixtures indicated and shall make all necessary measurements and verify the dimensions given by actual measurements at the building."

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Under these two provisions you inquire as to who must furnish the lamps and tubes. There exists an apparent ambiguity which must be resolved by reference to established rules for the construction of contracts. It is fundamental that in arriving at the intention of the parties to a contract it must be construed as a whole and that a contract in case of ambiguity will be construed liberally and most strongly in favor of the party who is not the author and who is not responsible for the use of the language giving rise to doubt. 17 C.J.S., Contracts, page 751. We note that the original specifications as dated April 25, 1952, did not contain the provisions above noted that all lamps and tubes will be furnished by the Division of Employment Security, but did contain the latter noted provision. It must be presumed that the State in authorizing the change in specifications by adding this provision, was aware of, and took into consideration all of the provisions relating to the same subject matter. Said clause is clear, concise and definite in its provisions and therefore must be held to be controlling.

In view of these facts and the rules of construction noted, we are of the opinion that it is the duty of the State rather than the contractor, under the terms of the contract, to furnish the tubes and lamps referred to.

CONCLUSION

Therefore it is the opinion of this office that under the terms of the contract entered into the 14th day of July 1952, for the construction of an office building for the Division of Employment Security, it is the duty of the State rather than the contractor to furnish tubes and lamps as referred to in Subpart (f) of Section 1, Division 33 of the revised specifications.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. D. D. Guffey.

Very truly yours,

JOHN M. DALTON
Attorney General

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